

## § 2635.303

(2) There is a personal relationship between the two employees that would justify the gift.

(c) *Limitation on use of exceptions.* Notwithstanding any exception provided in this subpart, an official superior shall not coerce the offering of a gift from a subordinate.

### § 2635.303 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Gift* has the meaning set forth in § 2635.203(b). For purposes of that definition an employee will be deemed to have paid market value for any benefit received as a result of his participation in any carpool or other such mutual arrangement involving another employee or other employees if he bears his fair proportion of the expense or effort involved.

(b) *Indirectly*, for purposes of § 2635.302(b), has the meaning set forth in § 2635.203(f). For purposes of § 2635.302(a), it includes a gift:

(1) Given with the employee's knowledge and acquiescence by his parent, sibling, spouse, child, or dependent relative; or

(2) Given by a person other than the employee under circumstances where the employee has promised or agreed to reimburse that person or to give that person something of value in exchange for giving the gift.

(c) Subject to paragraph (a) of this section, market value has the meaning set forth in § 2635.203(c).

(d) *Official superior* means any other employee, other than the President and the Vice President, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee. For purposes of this subpart, an employee is considered to be the subordinate of any of his official superiors.

(e) *Solicit* means to request contributions by personal communication or by general announcement.

(f) *Voluntary contribution* means a contribution given freely, without pressure or coercion. A contribution is not voluntary unless it is made in an amount determined by the contrib-

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uting employee, except that where an amount for a gift is included in the cost for a luncheon, reception or similar event, an employee who freely chooses to pay a proportionate share of the total cost in order to attend will be deemed to have made a voluntary contribution. Except in the case of contributions for a gift included in the cost of a luncheon, reception or similar event, a statement that an employee may choose to contribute less or not at all shall accompany any recommendation of an amount to be contributed for a gift to an official superior.

*Example 1:* A supervisory employee of the Agency for International Development has just been reassigned from Washington, DC to Kabul, Afghanistan. As a farewell party, 12 of her subordinates have decided to take her out to lunch at the Khyber Repast. It is understood that each will pay for his own meal and that the cost of the supervisor's lunch will be divided equally among the twelve. Even though the amount they will contribute is not determined until the supervisor orders lunch, the contribution made by those who choose to participate in the farewell lunch is voluntary.

### § 2635.304 Exceptions.

The prohibitions set forth in § 2635.302(a) and (b) do not apply to a gift given or accepted under the circumstances described in paragraph (a) or (b) of this section. A contribution or the solicitation of a contribution that would otherwise violate the prohibitions set forth in § 2635.302(a) and (b) may only be made in accordance with paragraph (c) of this section.

(a) *General exceptions.* On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

(1) Items, other than cash, with an aggregate market value of \$10 or less per occasion;

(2) Items such as food and refreshments to be shared in the office among several employees;

(3) Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends;

(4) Items given in connection with the receipt of personal hospitality if of

a type and value customarily given on such occasions; and

(5) Leave transferred under subpart I of part 630 of this title to an employee who is not an immediate supervisor, unless obtained in violation of § 630.912 of this title.

*Example 1:* Upon returning to work following a vacation at the beach, a claims examiner with the Department of Veterans Affairs may give his supervisor, and his supervisor may accept, a bag of saltwater taffy purchased on the boardwalk for \$8.

*Example 2:* An employee of the Federal Deposit Insurance Corporation whose bank examination responsibilities require frequent travel may not bring her supervisor, and her supervisor may not accept, souvenir coffee mugs from each of the cities she visits in the course of performing her duties, even though each of the mugs costs less than \$5. Gifts given on this basis are not occasional.

*Example 3:* The Secretary of Labor has invited the agency's General Counsel to a dinner party at his home. The General Counsel may bring a \$15 bottle of wine to the dinner party and the Secretary may accept this customary hostess gift from his subordinate, even though its cost is in excess of \$10.

*Example 4:* For Christmas, a secretary may give his supervisor, and the supervisor may accept, a poinsettia plant purchased for \$10 or less. The secretary may also invite his supervisor to a Christmas party in his home and the supervisor may attend.

(b) *Special, infrequent occasions.* A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

(1) In recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or

(2) Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.

*Example 1:* The administrative assistant to the personnel director of the Tennessee Valley Authority may send a \$30 floral arrangement to the personnel director who is in the hospital recovering from surgery. The personnel director may accept the gift.

*Example 2:* A chemist employed by the Food and Drug Administration has been invited to the wedding of the lab director who is his official superior. He may give the lab director and his bride, and they may accept, a place setting in the couple's selected china pattern purchased for \$70.

*Example 3:* Upon the occasion of the supervisor's retirement from Federal service, an

employee of the Fish and Wildlife Service may give her supervisor a book of wildlife photographs which she purchased for \$19. The retiring supervisor may accept the book.

(c) *Voluntary contributions.* An employee may solicit voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior and an employee may make a voluntary contribution of a nominal amount to an appropriate gift to an official superior:

(1) On a special, infrequent occasion as described in paragraph (b) of this section; or

(2) On an occasional basis, for items such as food and refreshments to be shared in the office among several employees.

An employee may accept such gifts to which a subordinate or other employee receiving less pay than himself has contributed.

*Example 1:* To mark the occasion of his retirement, members of the immediate staff of the Under Secretary of the Army would like to give him a party and provide him with a gift certificate. They may distribute an announcement of the party and include a nominal amount for a retirement gift in the fee for the party.

*Example 2:* The General Counsel of the National Endowment for the Arts may not collect contributions for a Christmas gift for the Chairman. Christmas occurs annually and is not an occasion of personal significance.

*Example 3:* Subordinates may not take up a collection for a gift to an official superior on the occasion of the superior's swearing in or promotion to a higher grade position within the supervisory chain of that organization. These are not events that mark the termination of the subordinate-official superior relationship, nor are they events of personal significance within the meaning of § 2635.304(b). However, subordinates may take up a collection and employees may contribute \$3 each to buy refreshments to be consumed by everyone in the immediate office to mark either such occasion.

*Example 4:* Subordinates may each contribute a nominal amount to a fund to give a gift to an official superior upon the occasion of that superior's transfer or promotion to a position outside the organization.

*Example 5:* An Assistant Secretary at the Department of the Interior is getting married. His secretary has decided that a microwave oven would be a nice gift from his staff

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and has informed each of the Assistant Secretary's subordinates that they should contribute \$5 for the gift. Her method of collection is improper. Although she may recommend a \$5 contribution, the recommendation must be coupled with a statement that the employee whose contribution is solicited is free to contribute less or nothing at all.

### Subpart D—Conflicting Financial Interests

#### § 2635.401 Overview.

This subpart contains two provisions relating to financial interests. One is a disqualification requirement and the other is a prohibition on acquiring or continuing to hold specific financial interests. An employee may acquire or hold any financial interest not prohibited by § 2635.403. Notwithstanding that his acquisition or holding of a particular interest is proper, an employee is prohibited in accordance with § 2635.402 of this subpart from participating in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. See also part 2640 of this chapter, for additional guidance amplifying § 2635.402.

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#### § 2635.402 Disqualifying financial interests.

(a) *Statutory prohibition.* An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

NOTE: Standards applicable when seeking non-Federal employment are contained in subpart F of this part and, if followed, will ensure that an employee does not violate 18 U.S.C. 208(a) or this section when he is negotiating for or has an arrangement concerning future employment. In all other cases where the employee's participation would violate 18 U.S.C. 208(a), an employee shall disqualify himself from participation in the matter in

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accordance with paragraph (c) of this section or obtain a waiver or determine that an exemption applies, as described in paragraph (d) of this section.

(b) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Direct and predictable effect.* (i) A particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this subpart.

(ii) A particular matter will have a predictable effect if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

NOTE: If a particular matter involves a specific party or parties, generally the matter will at most only have a direct and predictable effect, for purposes of this subpart, on a financial interest of the employee in or with a party, such as the employee's interest by virtue of owning stock. There may, however, be some situations in which, under the above standards, a particular matter will have a direct and predictable effect on an employee's financial interests in or with a nonparty. For example, if a party is a corporation, a particular matter may also have a direct and predictable effect on an employee's financial interests through ownership of stock in an affiliate, parent, or subsidiary of that party. Similarly, the disposition of a protest against the award of a contract to a particular company may also have a direct and predictable effect on an employee's financial interest in another company listed as a subcontractor in the proposal of one of the competing offerors.

*Example 1:* An employee of the National Library of Medicine at the National Institutes of Health has just been asked to serve on the